

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

CHAPTER 221

# **HOUSE BILL 2692**

AN ACT

AMENDING SECTION 42-2101, ARIZONA REVISED STATUTES; RELATING TO PRIVATE  
TAXPAYER RULINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-2101, Arizona Revised Statutes, is amended to  
3 read:

4 42-2101. Private taxpayer rulings; request; revocation or  
5 modification; taxpayer information ruling;  
6 definitions

7 A. The department may issue private taxpayer rulings to taxpayers and  
8 potential taxpayers on request. Each request shall be in writing and shall:

9 1. State the name, address and, if applicable, taxpayer identifying  
10 number of the taxpayer or potential taxpayer who requests the ruling.

11 2. Describe all facts that are relevant to the requested ruling.

12 3. State whether, to the best knowledge of the taxpayer or potential  
13 taxpayer, the issue or related issues are being considered by the department  
14 in connection with an active audit, protest or appeal that involves the  
15 taxpayer or potential taxpayer and whether the same request has been or is  
16 being submitted to another taxing authority for a ruling.

17 4. Be signed by the taxpayer or potential taxpayer who makes the  
18 request or by an authorized representative of the taxpayer or potential  
19 taxpayer.

20 B. A TAXPAYER RULING REQUEST THAT COMPLIES WITH SUBSECTION A,  
21 PARAGRAPHS 2 AND 3 OF THIS SECTION AND THAT IS SIGNED BY A REPRESENTATIVE OF  
22 A TAXPAYER OR POTENTIAL TAXPAYER SHALL BE CONSIDERED A REQUEST FOR A TAXPAYER  
23 INFORMATION RULING INSTEAD OF A PRIVATE TAXPAYER RULING.

24 ~~B.~~ C. A private taxpayer ruling OR TAXPAYER INFORMATION RULING may be  
25 revoked or modified by either:

26 1. A change or clarification in the law that was applicable at the  
27 time the ruling was issued, including changes or clarifications caused by  
28 legislation, adopted administrative rules and court decisions.

29 2. Actual written notice by the department to the last known address  
30 of the taxpayer or potential taxpayer of the revocation or modification of  
31 the private taxpayer ruling OR TAXPAYER INFORMATION RULING IF THE TAXPAYER  
32 IDENTIFYING INFORMATION HAS BEEN DISCLOSED TO THE DEPARTMENT PURSUANT TO  
33 SUBSECTION E OF THIS SECTION. IF TAXPAYER IDENTIFYING INFORMATION HAS NOT  
34 BEEN DISCLOSED, WRITTEN NOTICE BY THE DEPARTMENT TO THE LAST KNOWN ADDRESS OF  
35 THE TAXPAYER REPRESENTATIVE WHO REQUESTED THE RULING WILL CONSTITUTE NOTICE  
36 TO THE TAXPAYER OR POTENTIAL TAXPAYER.

37 ~~C.~~ D. With respect to the taxpayer or prospective taxpayer to whom  
38 the private taxpayer ruling was issued, the revocation or modification of a  
39 private taxpayer ruling shall not be applied retroactively to tax periods or  
40 tax years before the effective date of the revocation or modification and the  
41 department shall not assess any penalty or tax attributable to erroneous  
42 advice that it furnished to the taxpayer or potential taxpayer in the private  
43 taxpayer ruling if:

1           1. The taxpayer reasonably relied on the private taxpayer ruling.

2           2. The penalty or tax did not result either from a failure by the  
3 taxpayer to provide adequate or accurate information or from a change in the  
4 information.

5           E. SUBSECTION D OF THIS SECTION APPLIES TO A TAXPAYER INFORMATION  
6 RULING IF THE TAXPAYER OR POTENTIAL TAXPAYER PROVIDES ITS NAME, ADDRESS,  
7 IDENTIFYING NUMBER, IF APPLICABLE AND AUTHORIZATION PURSUANT TO SECTION  
8 42-2003, SUBSECTION A, PARAGRAPH 1 FOR THE REPRESENTATIVE OF THE TAXPAYER OR  
9 POTENTIAL TAXPAYER BEFORE THE DATE THE DEPARTMENT PUBLISHES THE RULING. THE  
10 DEPARTMENT SHALL NOTIFY THE REPRESENTATIVE OF THE TAXPAYER OR POTENTIAL  
11 TAXPAYER OF THE PROPOSED PUBLICATION DATE. IF THE DIRECTOR HAS DETERMINED  
12 THAT THE TAXPAYER INFORMATION RULING SHOULD NOT BE PUBLISHED PURSUANT TO  
13 SUBSECTION L OF THIS SECTION, SUBSECTION D OF THIS SECTION APPLIES IF THE  
14 TAXPAYER OR POTENTIAL TAXPAYER PROVIDES THE IDENTIFYING INFORMATION BEFORE  
15 THE DATE SPECIFIED BY THE DEPARTMENT ON ISSUING THE TAXPAYER INFORMATION  
16 RULING TO THE REPRESENTATIVE. IF THE TAXPAYER OR POTENTIAL TAXPAYER DOES NOT  
17 PROVIDE THE DEPARTMENT WITH THE IDENTIFYING INFORMATION AND REPRESENTATIVE  
18 AUTHORIZATION BEFORE THE PROPOSED PUBLICATION DATE, OR FOR AN UNPUBLISHED  
19 RULING, THE DATE SPECIFIED BY THE DEPARTMENT, THE TAXPAYER INFORMATION RULING  
20 IS NOT BINDING ON THE DEPARTMENT FOR THE PURPOSE OF ABATING INTEREST, PENALTY  
21 OR TAX.

22           ~~D.~~ F. A private taxpayer ruling OR TAXPAYER INFORMATION RULING may  
23 not be relied upon, cited ~~nor~~ OR introduced into evidence in any proceeding  
24 by a taxpayer other than the taxpayer who has received the private taxpayer  
25 ruling.

26           ~~E.~~ G. A taxpayer may apply for an administrative hearing to determine  
27 the propriety of a retroactive application of a revoked or modified private  
28 taxpayer ruling by filing a written petition with the department pursuant to  
29 section 42-1251 within forty-five days after receiving written notice of the  
30 department's intent to retroactively apply a revoked or modified private  
31 taxpayer ruling. THIS SUBSECTION APPLIES TO A TAXPAYER INFORMATION RULING IF  
32 THE TAXPAYER HAS DISCLOSED THE TAXPAYER'S IDENTIFYING INFORMATION PURSUANT TO  
33 SUBSECTION E OF THIS SECTION.

34           ~~F.~~ H. A private taxpayer ruling OR TAXPAYER INFORMATION RULING  
35 constitutes the department's interpretation of the law or rules only as they  
36 apply to the taxpayer making, and the particular facts contained in, the  
37 request.

38           ~~G.~~ I. A private taxpayer ruling OR TAXPAYER INFORMATION RULING may be  
39 issued only if no tax has accrued with respect to the transactions, events or  
40 facts contained in the request. The department may issue a private taxpayer  
41 ruling OR TAXPAYER INFORMATION RULING addressing a taxpayer's ongoing  
42 business activities, except that the ruling applies only to transactions that  
43 occur or tax liabilities that accrue from and after the date the taxpayer  
44 receives the ruling.

1       H. J. The department shall attempt to issue private taxpayer rulings  
2 OR TAXPAYER INFORMATION RULINGS within forty-five days after receiving the  
3 written request and on receiving the facts that are relevant to the  
4 ruling. If the ruling is expected to be delayed, the department shall notify  
5 the requestor of the delay and the proposed date of issuance.

6       I. K. ~~Within thirty days after being issued,~~ The department shall  
7 maintain the private taxpayer ruling OR TAXPAYER INFORMATION as a public  
8 record and make it available at a reasonable cost for public inspection and  
9 copying. The text of private taxpayer OR TAXPAYER INFORMATION rulings is  
10 open to public inspection subject to the confidentiality requirements  
11 prescribed by article 1 of this chapter.

12       L. AT THE TIME OF MAKING A PRIVATE TAXPAYER OR TAXPAYER INFORMATION  
13 RULING REQUEST, A TAXPAYER OR POTENTIAL TAXPAYER MAY SUBMIT A WRITTEN REQUEST  
14 THAT THE RULING NOT BE PUBLISHED DUE TO CONCERNS ABOUT CONFIDENTIALITY OR  
15 OTHER DISCLOSED REASONS. IF THE DIRECTOR DETERMINES THAT THE RULING SHOULD  
16 NOT BE PUBLISHED, THE RULING SHALL BE DEEMED CONFIDENTIAL FOR THE PURPOSE OF  
17 SECTION 39-121.01, SUBSECTION D, PARAGRAPH 2. IF THE DIRECTOR DETERMINES  
18 THAT THE RULING SHOULD BE PUBLISHED, THE TAXPAYER MAY WITHDRAW THE RULING  
19 REQUEST, AND THE DEPARTMENT SHALL NOT PROCEED WITH A RULING IF THE REQUEST IS  
20 WITHDRAWN. NOTWITHSTANDING SECTION 41-1092.02, THE DECISION OF THE DIRECTOR  
21 TO PUBLISH IS NOT AN APPEALABLE AGENCY ACTION AS DEFINED IN SECTION 41-1092  
22 AND IS NOT SUBJECT TO APPEAL BY THE TAXPAYER.

23       J. M. ~~In~~ FOR THE PURPOSES OF this section—:

24       1. "Private taxpayer ruling" means a written determination by the  
25 department issued on or after September 21, 1991 that interprets and applies  
26 one or more statutes contained in this title or title 43 and any applicable  
27 administrative rules that the department has adopted to the specific  
28 prospective facts described in the request for a private taxpayer ruling.

29       2. "TAXPAYER INFORMATION RULING" MEANS A WRITTEN DETERMINATION BY THE  
30 DEPARTMENT ISSUED ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS  
31 SECTION THAT INTERPRETS AND APPLIES ONE OR MORE STATUTES CONTAINED IN THIS  
32 TITLE OR TITLE 43 AND ANY APPLICABLE ADMINISTRATIVE RULES THAT THE DEPARTMENT  
33 HAS ADOPTED TO THE SPECIFIC PROSPECTIVE FACTS DESCRIBED IN A REQUEST FOR A  
34 TAXPAYER INFORMATION RULING.

APPROVED BY THE GOVERNOR MAY 20, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2008.